

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ROBERT TRACESKI and
LYNNE TRACESKI

v.

CA No. 04-153-T

MALCOLM MOORE, in his capacity as
Finance Director of the Town of
West Warwick, JOSEPH McCONAGHY,
NORMAN GIROUX, JOHN GARDINER,
ALIAS and THE TOWN OF WEST WARWICK

MEMORANDUM AND ORDER

ERNEST C. TORRES, Chief Judge.

Robert Traceski and Lynn Traceski brought this action against the Town of West Warwick and three West Warwick police officers for what the plaintiffs claim was a search of their home that violated their Sixth Amendment rights.

The Traceskis have appealed from a magistrate judge's order denying their motion to compel the defendants to identify the informant who provided the information upon which the defendants' application for a search warrant was based. For the reasons hereinafter stated, the magistrate judge's order is affirmed.

Background Facts

The complaint alleges that in January 2001, the defendant police officers obtained a warrant to search the plaintiffs' residence based, in part, upon information provided to Officer

McConaghy by a confidential informant that the plaintiffs were selling drugs from that location. The search did not uncover any evidence of any drug trafficking activity and left the Traceskis' premises in disarray. The complaint also alleges that McConaghy should have known that the informant was not credible.

The Traceskis are seeking compensatory and punitive damages for the search and the humiliation that it inflicted upon them.

The Motion to Compel

In an apparent effort to prove that McGonaghy knew or should have known that the informant was not credible, the Traceskis moved to compel the defendants to produce documents that would reveal the informant's identity. The magistrate judge entered an order denying that motion on the ground that law enforcement officers have a qualified privilege not to reveal an informant's identity and the Traceskis have appealed from that order.

Standard of Review

When a motion is referred to a magistrate judge for determination pursuant to 28 U.S.C. § 636(b)(1)(A), the magistrate judge's order is final unless it is "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

Analysis

It is well established that law enforcement officers have a qualified privilege not to disclose the identity of informants. Roviaro v. United States, 353 U.S. 53, 59 (1956); U.S. v. Martinez,

922 F.2d 914 (1st Cir. 1991). The purpose of the privilege is to further and protect "the public interest in effective law enforcement.'" U.S. v. Lewis, 40 F.3d 1325, 1335 (1st Cir. 1994)(quoting Roviaro, 353 U.S. at 59). Confidentiality enables the informant to continue obtaining valuable information about criminal activity and protects the informant from harm. See Lewis, 40 F.3d at 1335.

However, the privilege is not absolute. Thus, "[w]here the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way." Roviaro, 353 U.S. at 60-61. Accordingly, while the identity of an informant who is merely a "tipster," generally, need not be disclosed, disclosure may be required if the informant is a witness to or a participant in the criminal activity. Martinez, 922 F.2d at 921.

Because of the strong public interest in effective law enforcement, "the burden is on the defendant to demonstrate that the circumstances demand disclosure." Lewis, 40 F.3d at 1335. As the First Circuit has said, "[mere] speculation . . . is not sufficient.'" Id. (internal citations omitted); Martinez, 922 F.2d at 921. Rather, there must be a showing that knowledge of the informant's identity is essential to the presentation of the requesting party's case and justifies overriding the public

interest in keeping the informant's identity confidential. Lewis, 40 F.3d 1325 at 1335; Martinez, 922 F.2d at 921; Dole v. Local 1942 Int'l Brotherhood of Electric Workers, 870 F.2d 368, 372-373 (7th Cir. 1989).

In this case, the Traceskis have failed to sustain that burden. In order to establish that the defendants are liable for executing the warrant, the Traceskis must show that the defendants lacked a good-faith belief that the information provided by the informant was accurate. United States v. Capozzi, 347 F.3d 325,333-334 (1st Cir. 2003); United States v. Vigeant, 176 F.3d 565,571-573 (1st Cir. 1999); see United States v. Leon, 468 U.S. 897, 923 n. 24 (1984). The mere fact that no evidence of drug trafficking was uncovered during the search is not, by itself, sufficient and the Traceskis have not proffered any other facts that would support a finding of bad faith.

The Traceskis simply assert that the defendants knew or should have known that the informant was not credible. Apparently, that assertion emanates from their suspicion that the informant was an individual who harbored a grudge against them. However, they provide no factual basis for either that suspicion or for their assertion that Officer McGonaghy knew or should have known that the informant was not credible. Moreover, their assertion is contradicted by the search warrant affidavit executed by McConaghy which describes the informant as "someone who has provided [the]

affiant with information in the past which has proven to be credible and reliable and which has resulted in seizures of narcotics and arrests for narcotics violations." McConaghy Aff. ¶ 4.

Requiring law enforcement officers to reveal the identity of informants on the basis of unsupported speculation would create an exception that swallows the rule. Criminal defendants and individuals engaged in criminal activity could circumvent the requirement of good cause and force the identity of informants to be disclosed simply by asserting, in a civil action or otherwise, that the informant was not credible. While it may be appropriate to require disclosure in some cases, the public interest in effective law enforcement demands that disclosure be limited to cases in which such allegations are based on more than mere speculation.

Conclusion

For all of the foregoing reasons, this Court finds that, far from being "clearly erroneous," the magistrate judge's order denying the Traceskis' motion to compel was correct. Therefore, that order hereby is affirmed.

IT IS SO ORDERED:

Ernest C. Torres, Chief Judge
Date: , 2005